

9. CONTRACT MANAGEMENT

9.00 • INTRODUCTION

(Rev 3/03)

The contract manager is the authorized representative of the State of California responsible for administering a contract and monitoring the contractor's performance. The contract manager serves as a liaison with the contractor and may perform administrative tasks ranging from the request of contract services through the performance and final payment for completed services.

9.01 • TABLE OF CONTENTS

(Rev 3/97)

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9.02 • DEFINITIONS

- A. Contract Officer: person designated by the Department to have full responsibility for the management and approval of the Department's contracts. Authorized to sign contracts on behalf of the Department.
- B. Contract Manager: person designated by the Department to monitor the contractor's performance to ensure compliance with all contract provisions (usually a program staff member familiar with the requirements of the contract). Duties may or may not include authority to sign contracts.

9.04 • RESPONSIBILITIES OF THE CONTRACT MANAGER

(Rev 1/01)

- A. Typical responsibilities of the contract manager are as follows:
 1. Develop and write a clear, concise, detailed description of the work to be performed.
 2. Review the draft contract for contract provisions, scope of work, technical requirements, completion dates, benchmarks, timelines, estimated quantities, dollar amounts, and final product.

(9.04 A. Responsibilities of the Contract Manager – continued)

3. Ensure compliance with all federal or special regulations.
 4. Ensure that funding is available and the contract is encumbered in conformance with the agency's policy.
 5. Notify the contractor to begin work.
 6. Maintain contract documentation.
 7. Monitor the contract to ensure compliance with all contract provisions:
 - a. Monitor progress of work to ensure that services are performed according to the quality, quantity, objectives, timeframes, and manner specified in the contract; e.g., review progress reports and interim products.
 - b. Ensure that all work is completed and accepted by the agency before the contract expires.
 8. Assess and request amendments, renewals or new contracts as required allowing sufficient time to process and execute such changes before the contract expires or funds are depleted in order to prevent a lapse in service. Often, two months are required for amendments and renewals, and four to six months for new contracts.
 9. Review and approve invoices for payment to substantiate expenditures for work performed and to prevent penalties being assessed under GC § 926.17. (See SCM 8)
 10. Monitor contract expenditures to:
 - a. Ensure there are sufficient funds to pay for all services rendered as required by contract.
 - b. Identify low spending levels and consider partial dis-encumbrance and reassignment of funds.
 11. Notify appropriate personnel of equipment purchase, if applicable, and ensure property is tagged and inventoried before approving cost reimbursement.
 12. Monitor use of DVBE subcontractors and suppliers to ensure attainment of approved contract participation goals. Contract Managers should ensure that language for verification of DVBE participation is included in the contract. (See SCM 8.16 A.2.f.)
 13. Contact the Contracts Office for assistance with contract problems.
 14. Verify that the contractor has fulfilled all requirements of the contract before approving the final invoice.
 15. Identify and approve the final invoice, as appropriate, and forward it to accounts payable for payment.
 16. Complete the Contractor Evaluation form – STD 4, for consultant services contracts of \$5,000 or more. Negative evaluations must be sent to DGS/OLS. (See SCM 3.02.5.)
 17. Approve the final products or service.
- B. Each agency must prepare the following reports required by legislation (See SCM 7):
1. Fair Employment and Housing (Contract Award Report – STD 16, due within ten working days of the award date) where applicable.
 2. DVBE Report (annual, due January 4)
 3. Small Business Report (annual, due August 1)
 4. Consultant Report (annual, due August 12)

9.05 • CONTRACT MANAGER “DON'TS”

- A. The contract manager is not authorized to take the following actions:
 - 1. Instruct the contractor to start work before the contract is executed and approved.
 - 2. Change the description or scope of work of the contract.
 - 3. Direct the contractor to do work that is not specifically described in the contract.
 - 4. Sign the contract as the agency's authorized signator unless authorized in writing.
 - 5. Sign any contractor's contract form.
- B. The contract manager must not authorize payment to the contractor for any work not performed satisfactorily.
- C. In addition, the contract manager is not authorized to do the following without an executed and approved contract amendment in place:
 - 1. Extend the time period of the contract.
 - 2. Allow the contractor to incur costs over the original limit set in the contract.

9.07 • ETHICS

(Rev 3/03)

No contract manager shall accept, directly or indirectly, any gift, loan of money or equipment, meal, lodging, transportation, entertainment, service, or any other favor of value from any person who is doing or seeking to do business of any kind with the contract manager's agency. Such circumstances could be construed as intent to influence the contract manager in his or her official duties or as a reward for any official action performed by the contract manager. Favors should be courteously refused. (See GC § 19990 et seq.) Other ethical issues include the following:

- A. Contract managers shall not make outside purchases of materials or services from any business entity in which they have a financial interest.
- B. Employees are prohibited from using their position in state government to bestow any preferential benefit on anyone related to them by family, business, or social relationship.
- C. Even the appearance of questionable or unethical practices is detrimental to both employees and the department.
- D. Resolution of any questionable relationships or practices should be referred to your supervisor.

9.09 • RECORD KEEPING

(Rev 11/04)

- A. Each agency is responsible for maintaining all invoices, records, and relevant documentation for three years after the final payment under the contract. (GC § 8546.7) The following format is recommended for the maintenance of contract records:
 - 1. Label a file folder for each contract administered. In each file folder include:
 - a. A log sheet for a diary of activities related to the contract. Each time you speak with anyone about the contract, make a note of the date of the discussion, and the subject matter discussed.
 - b. A file guide labeled “Invoices.” Retain a copy of all invoices in this file guide.

(9.09 A. 1. Record Keeping – continued)

- c. A copy of the executed contract and other pertinent documentation, such as a copy of the original contract request and any correspondence related to the contract or contractor.
2. Prepare a computer file of all contracts administered. This practice allows easy access to management information, such as expenditures, contract expirations, and contract renewals.
3. Prepare a spreadsheet of expenditures. This practice is especially necessary if electronic tracking is not used. The spreadsheet can be a simple document showing the contract amount encumbered and the deduction for each invoice as it is approved for payment.
4. Document the notification to the contractor of the start date. Work cannot begin before contract execution and the effective date of the contract. Although initial notification to start work may be verbal, it should also be documented in writing and a copy of the notification retained in the contract file.
5. Keep copies of the correspondence with the contractor. All communications about the contract and/or the contractor should be in writing or followed up in writing and a copy placed in the contract file. This practice protects the agency and the contract manager in the event of legal problems or an audit.
6. Monitor and document the performance of contract services. Contract managers must monitor the contractor's performance and document it accordingly.
7. Document the nonperformance of contract services. If problems are encountered during the term of the contract, they should be fully documented. Letters to contractors should outline any problems related to substandard or non-performance. Use contract specifications verbatim in letters so that there is no doubt about the services covered in the contract. All letters about nonperformance should be sent by certified mail with copies to all concerned parties. A copy of the letter should be sent to the appropriate payment unit to eliminate the possibility of erroneous invoice payment. (See SCM 9.11)
8. Oversee the completion of the contract. To finalize or complete the contract process, contact the contractor to determine whether all invoices have been received. Disencumber any remaining funds by notifying the appropriate payment unit by memo of the amount to be disencumbered. A copy should be retained in the contract file folder. If a computer file was used, close that file. Dis-encumbrance should be completed in a timely manner to release unspent funds for other purposes within the current fiscal year.
9. Evaluate the contractor. Any consultant services contract of \$5,000 or more requires completion of a Contract/Contractor Evaluation – STD 4, within 60 days after completion of the contract (PCC § 10369). When a negative finding is made, the Contractor Evaluation – STD 4, shall be forwarded to DGS/OLS within five days of completion of the evaluation. Contract/Contractor Evaluation forms are not public documents and should not be kept in the contract file.

9.11 • PERFORMANCE OF THE CONTRACTOR

- A. Problems concerning the contractor's performance must be fully documented in writing and made a part of the contract manager's contract file.

(9.11 A. Performance of the Contractor – continued)

1. When work under a contract is unsatisfactory, a contract manager should:
 - a. Notify the contractor in writing by certified mail.
 - b. Explain why the work is not satisfactory and what corrective action is expected.
 - c. Give a specified period of time in which to satisfactorily perform the work.
2. In addition, the letter should inform the contractor that if the problems are not corrected, or if performance does not satisfactorily improve, the agency will terminate the contract; have the work finished by another contractor; and hold the original contractor liable for any additional costs, including the costs of administration and rebidding of the work.
3. If the contract manager and the contract officer are uncertain of sufficient cause to terminate the contract and assess damages, they may request a legal opinion from the agency's legal counsel.
4. After reviewing the case, legal counsel may make recommendations for an appropriate settlement of the subject contract and outline the necessary steps to be taken.

9.12 • TERMINATION OF THE CONTRACT**(Rev 1/01)**

- A. Contractors should be notified by certified mail, or personal service, if an agency intends to exercise a termination for cause in the contract. The letter should also clearly set forth any task(s) required by the contractor such as return of state equipment, submittal of final invoice for work completed, etc.
- B. The contractor must be reimbursed for all reasonable expenses authorized and incurred up to the date of termination, including any costs associated with termination, pursuant to the terms of the contract. However, the state is only obligated to pay for goods or services that meet the performance standards under the contract

9.14 • CLOSING OF SERVICE CONTRACTS

It is the contract manager's responsibility to close the contract file. This action may consist of, but is not limited to, disencumbrance of funds, evaluation of the contractor, and authorization of final payment of invoices. If applicable, it may involve requesting renewal of the contract.

9.16 • RETENTION OF CONTRACT RECORDS

All contracts involving expenditures of public funds in excess of \$10,000 must contain a provision that the contract is subject to the examination and audit of the awarding department or its delegate or the State Auditor for a period of three years after final payment under the agreement. Therefore, records must be retained for this period. The contractor must agree that the awarding department shall have access to premises, on reasonable notice, during normal business hours for interviewing employees and inspecting and copying such books, records, accounts, and other material that may be relevant to a matter under investigation for the purpose of determining compliance (PCC § 10115 et seq.; 2 CCR §§ 1896.60 et seq. and 1896.75).

An exception to the three-year status is when a contract audit is in dispute or litigation. In those instances the time records are to be retained is extended.

10. PUBLIC WORKS CONTRACTS

10.00 • INTRODUCTION

This chapter is intended to provide guidance in the preparation, administration, and execution of small or minor public works contracts that do not exceed \$400,000 for most agencies, and \$500,000 for Resources Agency Departments. This chapter applies to public works contracts delegated to State agencies by DGS under PCC §§ 10108 and 10108.5.

This chapter does not apply to public works contracts, which are defined as projects under PCC § 10108, by agencies listed in PCC § 10106. Currently, those agencies are: the Department of General Services, Department of Transportation (DOT), Department of Water Resources (DWR), Department of Boating and Waterways (DB&W), and Department of Corrections (DOC). These agencies may execute public works contracts for any amount and are not subject to the review and approval of the DGS. (PCC § 10100 et seq.)

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10.05 • DEFINITIONS

(Rev 3/03)

- A. A public works contract is defined as “an agreement for the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind,” (PCC § 1101).
- B. A project is defined as the “erection, construction, alteration, repair, or improvement of any state-owned structure, building, road, or other state improvement of any kind with a total cost exceeding an amount periodically adjusted by the Director of Finance (PCC § 10105). Budget Letter 00-02 has established this amount as \$120,000

10.10 • AUTHORIZATION OF PUBLIC WORKS CONTRACTS

(Rev 3/03)

NOTE: There is no NCB process available for Public Works Contracts.

Table 10.1
Authorization and Legal References

Type of Contract	Authorization Required	Legal Reference
Under \$120,000	DGS/OLS	PCC § 10295
Between \$120,000 and \$400,000	DGS/RESO STD. 23 & DGS/OLS	PCC § 10108
Up to \$500,000	Resources Agency department with consent of DGS	PCC § 10108.5
Public works by: DWR DB&W DOC DOT DGS	Attorney General or Department attorney	PCC §§ 10106, 10108, and 10220 Water Code § 120 et seq. Harbor and Navigation Code § 50 Penal Code § 7000 et seq. GC § 14000 et seq. GC § 14600 et seq.

10.15 • PUBLIC WORKS CONTRACTS BETWEEN \$1,000 AND \$120,000

(Rev 10/05)

A. Prepare the bid package as follows:

1. Prepare detailed plans and specifications. Obtain approval from:
 - a. The State Fire Marshal (SFM):

SFM approval required for changes in occupancy or use; remodels and modifications; and anytime flammable, combustible or hazardous materials will be stored or planned for the site.

Note there may be a 30-45 day turnaround on plan reviews; over-the-counter services can be arranged for plans of 3 pages or less with an appointment; property development without structures or fences does not require plan review and approval;

- b. The Department of General Services, Division of the State Architect, Access Compliance (DSA/AC):

DSA/AC review and approval is required for work involving construction of new, **permanent** or temporary buildings and facilities; or for renovation, structural repair, alteration, or additions to existing buildings and facilities including those identified as historic buildings.

2. Prepare the Notice to Contractors, including the following notifications:

- a. A statement that the five percent small business preference will be granted to properly certified small businesses (a completed form STD 811 must be submitted with the bid proposal to request this preference)

(10.15 A. 2. Public Works Contracts Between \$1,000 and \$120,000 – continued)

- b. The State Contractors License Board license classification necessary to bid on the contract
 - c. Where to obtain bid packages
 - d. Date, time, and place that bids must be received to be considered
 - e. Notice that the successful bidder must enter into a contractual agreement in the form of a Standard Agreement – STD 2 or STD 213
 - f. List of prevailing wage rates from the Department of Industrial Relations or a statement that the prevailing rate of per diem wages are on file and available for inspection
 - g. Date, time, and place of a pre-bid meeting and/or site inspection. Mandatory pre-bid meetings must occur at least 5 calendar days after the first publication of the initial Notice to Bidders.(PCC 6610)
 - h. If the contract is estimated to exceed \$ 5,000:
 - Necessity of providing a payment bond (STD 807) equal to 100% of the total amount payable under the contract
 - Statement that the contract is subject to state contractor nondiscrimination and compliance requirements (2 CCR § 8201)
3. Prepare instructions to bidders on the following:
 - a. Examination of bid documents and site
 - b. Bids and bidders to comply with
 - Sealed bids
 - Bid form required to be used
 - Responsibility for ensuring that their sealed bid is received at the proper time and at the proper place as shown in the Notice to Contractors or addenda. Any bid received after the scheduled closing time for the receipt of bids will be returned unopened
 - DVBE participation requirements
 - Drug-free workplace certification
 - Restrictions applying to state employees
 - Restrictions on employment of undocumented aliens
 - Antitrust claims
 - Corporate qualification to do business in California
 - Expatriate corporation certification
 - Review of Commercially Useful Function being performed by a certified small business or DVBE
 - Any other information regarding the bid
4. Prepare the bid proposal form, allowing for:
 - a. Bid amount
 - b. Small business preference request

(10.15 A. 4. Public Works Contracts Between \$1,000 and \$120,000 – continued)

- c. Place for listing of subcontractors' names, business addresses, and contractor's license numbers of all subcontractors who will perform work, labor, or render services in an amount in excess of one-half of one percent of the general contractor's total bid; and the portion of the work that each will perform
- d. General contractor's name, business address, federal employer identification number, and contractor's license number, classification, and expiration date
- e. Statement of Compliance, which may be printed on the bid proposal form in lieu of using a STD 19
- f. Signature block, including the printed name of the officer signing the bid, the officer's title and telephone number, and the date.
- g. Compliance with PCC § 10126, whenever additive and deductive items are included in a bid, the bid document shall specify method to determine lowest bid.

Note: A prime contractor whose bid is accepted may not substitute a subcontractor listed in the original bid unless the provisions of PCC 4107 or 4107.5 apply and a hearing is held, if required.

- 5. Include all forms required to be submitted with the bid proposal:
 - a. Drug-free Workplace Certification – STD 21
 - b. DVBE participation certifications and/or good faith effort documentation
 - c. Labor Code Certification
 - d. Statement of Compliance – STD 19, if not included on the bid proposal form
 - e. Non-collusion affidavit (must be notarized) see Appendix
 - f. Small Business Preference and Certification Request (STD 811)
 - g. Standard Form of Guarantee
 - h. Expatriate Corporation certification
- 6. Prepare General Conditions, including:
 - a. Insurance requirements; liability and workers compensation
 - b. Bond requirements
 - Payment Bond (Std 807) if contract exceeds \$5,000 – 100% of contract amount
 - Performance Bond if contract exceeds \$10,000 and progress payments will be made – 100% of contract amount
 - c. Prevailing wage rates
 - d. National Labor Relations Certification
 - e. Standard California Nondiscrimination Construction Contract Specifications STD 18
 - f. Use of apprentices
 - g. Guarantee

(10.15 A. 6. Public Works Contracts Between \$1,000 and \$120,000 – continued)

- h. "As Built" plans
 - i. Final inspection and acceptance
 - j. Other conditions as required
- 7. Include special provisions:
 - a. Contractor's license classification required
 - b. Number of working days allowed
 - c. Liquidated damages (if included, must provide that the contractor shall not be assessed liquidated damages when the delay in completing the project is caused by the failure of the state or the owner of a utility to provide for removal or relocation of the existing utility facilities)
 - d. Progress payments
 - e. Progress schedule
 - f. Other conditions as required
- 8. Prepare detailed specifications.
- 9. Prepare drawings (if necessary).
- 10. Prepare bid refusal form.
- 11. Prepare other provisions as required
- B. Advertise in the California State Contracts Register including:
 - 1. Description of work to be done.
 - 2. Bid opening date and time.
 - 3. Contract duration.
 - 4. Type of contractor's license required.
 - 5. City and county in which work is to be done.
 - 6. Contact name and phone number to obtain bid package.
- C. Distribute bid packages to:
 - 1. Prospective bidders.
 - 2. DVBE assistance organizations.
 - 3. Builders exchange nearest the work to be performed if contract is estimated to be more than \$5,000.
- D. Hold a pre-bid meeting and site inspection:
 - 1. Hold a pre-bid meeting to explain all required forms, including the Drug-free Workplace Certification, DVBE participation and documentation, Labor Code Certification, and non-collusion affidavit (which must be notarized).
 - 2. Hold a site inspection to allow all prospective contractors to see where the work is to be done.

(10.15. Public Works Contracts Between \$1,000 and \$120,000 – continued)

- E. Conduct the bid opening.
1. Verify that all required forms are completed and signed including:
 - a. Bid proposal form
 - b. Drug-free Workplace Certification
 - c. DVBE participation (evaluate for compliance)
 - d. Labor Code Certification
 - e. Non-collusion affidavit (must be notarized)
 - f. Small Business Preference and Certification Request – STD 811
 - g. Expatriate Corporation certification
 2. Verify the status of the business as follows:
 - a. Contractor's license and classification with the Contractors License Board
 - b. Corporation status with the Secretary of State
 - c. Small business status with the OSDC.
 3. Return unopened any bids received after the due date.
 4. Award the contract to the lowest responsible and responsive bidder
 5. Transmit reports:
 - a. Within 10 working days of an award, send a completed STD 16 to the Department of Fair Employment and Housing if the contract award exceeds \$5,000, including contracts with the University of California.
 - b. Within five working days of an award, send a completed Division of Apprenticeship Standards – DAS 13, to the Department of Industrial Relations if the contract award exceeds \$30,000 or 20 working days.
- F. Prepare the Standard Agreement – STD 2 or STD 213, including:
1. Statement of work
 2. Period of performance
 3. Cost and payment including:
 - a. Total amount to be paid
 - b. When payment(s) will be made
 - If making progress payments, include the provision that the state shall retain out of each payment an amount equal to ten percent of the payment.
 - The departments of Boating and Waterways, Corrections, General Services, Transportation, and Water Resources must publish progress payments made to the general contractor in the California State Contracts Register.
 - c. Address to which invoices and progress reports shall be mailed
 4. Standard California Nondiscrimination Construction Contract Specifications for contracts exceeding \$5,000 (STD 18)

(10.15 F. Public Works Contracts Between \$1,000 and \$120,000 – continued)

5. National Labor Relations Board Certification
 6. Project monitor's name and telephone number
 7. Contract amendments
 8. Resolution of disputes
 9. Final approval required before contract has force or effect
 10. Antitrust claims
 11. Americans with Disabilities Act
 12. Restrictions applying to state employees
 13. Prevailing wage rates
 14. Certificate of Insurance
 15. Audit language (if contract exceeds \$10,000) and/or DVBE participation
 16. Instructions to bidders
 17. Bid proposal form
 18. Labor Code certification
 19. Non-collusion affidavit
 20. General conditions
 21. Special provisions
 22. Specifications
 23. Drawings
- G. Prepare the award letter and mail the documents to the contractor, requesting the following actions:
1. Standard Agreement – STD 2 or STD 213: Sign all four copies.
 2. Specifications and Drawings: Sign all four (4) sets.
 3. Payment Bond – STD 807: Have bonding company execute two copies (if contract exceeds \$5,000).
 4. Performance Bond: Have bonding company execute two copies on standard bonding company forms (if contract exceeds \$10,000 and progress payments will be made).
 5. Certificate of Insurance: Have insurance agent execute for liability and workers compensation insurance.
 6. Asbestos notification letter.
 7. Payee Data Record: Complete and return (send to accounting office and retain one copy in the contract file).
- H. Prepare the Contract Transmittal – ~~STD 15~~ or STD 215 including:
1. Certificate of Insurance for liability and workers compensation insurance.
 2. Payment Bond (if contract exceeds \$5,000).

(10.15 H. Public Works Contracts Between \$1,000 and \$120,000 – continued)

3. Performance Bond (if contract exceeds \$10,000 and progress payments will be made).
 4. Secretary of State corporate status check.
 5. Contractor's License Board verification.
 6. Small business verification (if applicable).
 7. Drug-free workplace and other certifications.
 8. DVBE participation package (if applicable).
 9. California State Contracts Register advertisement.
 10. List of contractors sent bid package.
 11. All bids received.
 12. Copy of bid package.
- I. Route the Standard Agreement and transmittal package to the accounting office for encumbrance and to the approving authority.
 - J. When the approved contract is returned, send a letter to the contractor with its approved copy and distribute the remaining approved copies as necessary.

10.20 • PUBLIC WORKS CONTRACTS BETWEEN \$120,000 AND \$400,000
(Rev 3/03)

- A. Obtain approval from DGS/RESO on a Request for Project Undertaking by State Agency STD 23.
- B. Include all requirements for contracts between \$1,000 and \$120,000.
- C. Place additional advertisements as follows:
 1. Advertise the Notice to Contractors once a week for two consecutive weeks in one local paper of general circulation published in the county where the work is to be done. Obtain an affidavit of publication.
 2. Advertise the Notice to Contractors once a week for two consecutive weeks as follows:
 - a. If the work is to be done in the counties of Imperial, Inyo, Kern, Los Angeles, Mono, Orange, Riverside, San Bernardino, San Diego, San Luis Obispo, Santa Barbara, Tulare, or Ventura, advertise in a trade paper of general circulation published in Los Angeles County. Obtain an affidavit of publication.
 - b. If the work is located in a county other than those listed in 2(a) above, advertise in a trade paper of general circulation published in San Francisco and provide a reasonable length of time between the publication of the advertisement and the date of submission of bids to give contractors sufficient time to prepare bids. Obtain an affidavit of publication.

Note: Until further notice, exemption is given for the direct placement of such advertisements for publication by the agency without prior submission to the Department of General Services. Invoices for the cost of advertisements may be submitted directly to the Controller with the claim for payment.

- D. Include in the instructions to bidders the requirement that the bid must be accompanied by one of the following forms of bidder's security: cash, a cashier's check, a certified check, or a bidder's bond executed by an admitted surety insurer and made payable to the state agency.

(10.20 D. Public Works Contracts Between \$120,000 and \$400,000 – continued)

The security must be in an amount equal to ten percent of the amount bid. A bid must not be considered unless one of the forms of the bidder's security is enclosed with it.

E. Prepare the contract transmittal

1. Include all information shown in SCM Section 10.15(H).
2. Include an approved copy of form STD 23.
3. Include the affidavits of publication for advertisements in both the local paper and the trade paper.

10.25 • REQUIREMENTS OF PUBLIC WORKS CONTRACTS**(Rev 4/04)****A. Specifications**

Ensure that whoever prepares the bid specifications is aware of the following requirements:

1. Work specifications

Prepare clear and complete written specifications for the work. The specifications must be adequate in detail to apprise the prospective bidder of the character and extent of the work to be done and to ensure that bids will be comparable and competitive. Room for speculation and conjecture must be reduced to a minimum.

2. Product specifications

- a. Specifications calling for a designated material, product, item, or service by a specific brand or trade name must list at least two brands or trade names of comparable quality or utility followed by the words "or equal."
- b. In cases involving a unique or novel product application required to be used in the public interest, or where only one brand or trade name is known to the agency, the specification may list only the one followed by the words "or equal."

3. The specifications shall provide for a period of at least 35 days after the award of the contract for submission of data substantiating a request of an "or equal" item. PCC § 3400(b) provides that if the agency makes a finding, included in the specifications, that a particular material, product, item, or service is designated by specific brand or trade name for any of the following purposes: 1) so that a field test or experiment may be made to determine the product's suitability for future use; 2) in order to match other products in use on a particular public improvement either completed or in the course of completion; 3) in order to obtain necessary item that is only available from one source; and 4) in order to respond to an emergency. If the agency is aware of an equal product manufactured in California, it must name such product in the specifications.

B. Prevailing Wages:

1. Obtain from the Department of Industrial Relations the prevailing wage rates before requesting bids. (www.dir.ca.gov) (Labor Code §§ 1770 and 1773).
2. The prevailing wage rates for each of the crafts or trade classifications involved in the proposed work to be contracted for must be set forth in the Invitation for Bids and in the contract itself.

(10.25 B. Requirements of Public Works Contracts – continued)

Note: In lieu of specifying the rate of wages in the Invitation for Bids and in the contract, the agency may include a statement that copies of the prevailing rate of per diem wages are on file at its principal office and shall be made available to any interested party on request.

3. The general prevailing rates of wages may be obtained from the Department of Industrial Relations or any source authorized by the Department of Industrial Relations.

10.30 • PUBLIC WORKS CONTRACTS REQUIRED LANGUAGE
(Rev 3/03)**A. Instructions To Bidders****1. Employment of undocumented aliens**

“No state agency or department, as defined in Public Contract Code § 10357, that is subject to this code, shall award a public works contract to a bidder or contractor, nor shall a bidder or contractor be eligible to bid for or receive a public works contract, who has, in the preceding five years, been convicted of violating a state or federal law regarding the employment of undocumented aliens. See Public Contract Code § 6101.”

2. Antitrust claims

“The contractor offers and agrees and will require all of his other subcontractors and suppliers to agree to assign to the awarding body all rights, title, and interest in and to all causes of action they may have under Section 4 of the Clayton Act (15 USC § 15) or under the Cartwright Act (Chapter 2 [commencing with § 16700] of Part 2 of Division 7 of the Business and Professions Code) arising from purchases of goods, services, or materials pursuant to the public works contract or subcontract. The assignment made by the contractor and all additional assignments made by the subcontractors and suppliers shall be deemed to have been made and will become effective at the time the awarding body tenders final payment to the contractor without further acknowledgment or the necessity of tendering to the awarding body any written assignments.”

“If an awarding body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under Government Code sections 4550 – 4554, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, on demand, recover from the public body any portion of the recovery, including treble damages, and attributable overcharges that were paid by the assignor but were not paid by the public body as a part of the bid price, less the expenses incurred in obtaining that portion of the recovery. On demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under Government Code sections 4550 – 4554 if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action.”

B. General Conditions**1. Prevailing Wage (See SCM 10.25 B.)**

(10.30 B. Public Works Contracts Required Language – continued)

2. National Labor Relations Certification

“By signing the contract, the contractor swears under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against the contractor within the immediately preceding two year period because of the contractor’s failure to comply with an order of a federal court which orders the contractor to comply with an order of the National Labor Relations Board.”

C. Standard Agreement – STD 2 or STD 213

1. National Labor Relations Certification

(Use the same wording as provided in 10.30 B.2. above)

2. Audit Language (For contracts in excess of \$10,000 and/or when DVBE participation is required)

“The contractor agrees that the (awarding agency), or the Bureau of State Audits or its designated representative, shall have an absolute right of access to all of the contractor’s records, files, documents, accounts, and financial affairs as deemed necessary for the purpose of conducting an audit to determine compliance with the terms and conditions of this contract. The contractor shall provide the auditor(s) with any relevant information requested without unnecessary delay and, on reasonable notice, permit access to its premises during normal business hours for the purpose of interviewing staff and inspecting and copying such books, records, accounts, and any other material as warranted to conduct the audit. The contractor further agrees to maintain such records for a period of three years after final payment is made on this contract or three years after resolution of all issues that may arise as a result of any litigation, claim, negotiation, or audit related to the contract, whichever is later. The state agrees to treat as confidential any proprietary information obtained as a part of any such audit.”

3. Americans with Disabilities Act

“By signing this contract, the contractor assures the state that it complies with the Americans with Disabilities Act (ADA) of 1990 (42 USC § 12101 et seq.), which prohibits discrimination on the basis of disability, as well as with all applicable regulations and guidelines issued pursuant to the ADA.”

4. Labor Code Certifications

a. I am aware of the provisions of Section 3700 of the Labor Code, which require every employer to be insured against liability for workers’ compensation or to undertake self-insurance in accordance with the provisions of that Code, and I will comply with such provisions before commencing the performance of the work of this contract.

b. “It is hereby mutually agreed that the contractor shall forfeit to the State (enter amount from Labor Code Section § 1775) dollars for each calendar day, or portion thereof, for each worker paid by him or her, or subcontractor under him or her, less than the prevailing wage so stipulated and in addition the contractor further agrees to pay to each worker the difference between the actual amount paid for each calendar day, or portion thereof, and the stipulated prevailing wage rate for the same. This provision shall not apply to properly, registered apprentices.”

(10.30 C. 4. b. Public Works Contracts Required Language – continued)

Note: Labor Code Section 1771.5 allows exemptions from the general prevailing rate under specific conditions for departments with Labor Compliance Programs.

- c. It is further agreed that the maximum hours a worker is to be employed is limited to eight hours a day and 40 hours a week and the contractor shall forfeit, as a penalty to the state, twenty-five dollars for each worker employed in the execution of the contract for each calendar day during which a worker is required or permitted to labor more than eight hours in any calendar day or more than 40 hours in any calendar week, in violation of Labor Code Sections 1810-1815, inclusive.
- d. Properly registered apprentices may be employed in the prosecution of the work. Every such apprentice shall be paid the standard wage paid to apprentices under the regulations of the craft or trade at which he or she is employed, and shall be employed only at the work of the craft or trade to which he or she is registered.

The contractor and each subcontractor must comply with the requirements of Labor Code Section 1777.5 and any related regulations regarding the employment of registered apprentices.

- e. Each contractor and subcontractor shall comply with the Labor Code Section 1776 regarding record keeping.

CHAPTER 10 – APPENDIX

**NONCOLLUSION AFFIDAVIT TO BE EXECUTED BY
BIDDER AND SUBMITTED WITH BID FOR PUBLIC WORKS**

STATE OF CALIFORNIA)
) SS
COUNTY OF _____)

_____, being first duly sworn, deposes and

says that he or she is _____ of
(position or title)

(the bidder)

the party making the foregoing bid that the bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the bid is genuine and not collusive or sham; that the bidder has not directly or indirectly induced or solicited any other bidder to put in a false sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or that anyone shall refrain from bidding; that the bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the bid are true; and, further, that the bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid.

Dated: _____

By _____
(person signing for bidder)

11. ARCHITECTURAL AND ENGINEERING CONTRACTS

11.00 • INTRODUCTION

(Rev 1/01)

This chapter explains the state's process for selecting the professional services of private architectural, landscape architectural, engineering, environmental, land surveying, or construction management firms. This process is commonly referred to as the A & E method.

Legal authority: GC § 4525 et seq.; PCC § 6106.

Each state agency must develop its own regulations for implementation in order to use the (A & E) selection process. DGS' review of A&E contracts will include determining whether the agency complied with their own regulations.

11.01 • TABLE OF CONTENTS

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11.03 • TYPES OF PROJECTS

(New 1/01)

- A. Specific Projects. A project that involves a single subject matter, such as a building or improvement at a designated site, will result in a single contract.
- B. Single Firm. Contract must be let to the single most qualified firm.
- C. Multiple Contracts / Multiple Firms
 - 1. Circumstances for which you can award to multiple firms would be as follows:
 - a. Multiple contracts with each contract covering a different, specific geographic region.
 - b. Multiple contracts with each contract covering a specific, unique discipline.
 - c. Multiple contracts for which there would be a primary contractor, with a backup contractor in the event the primary contractor is unavailable for an assignment.
 - 2. An agency must have regulations supporting multiple award contracting.
- D. On-Call" Contracts

When a project can be shown to involve more than one component, site or activity, an "on-call" contract (sometimes referred to as a "retainer" contract) may be appropriate. An

(11.03 D. Types of Projects – continued)

agency must have regulations to support on-call contracting. Various components may appropriately be designated a project if they involve the same kind of design work at several locations.

11.05 • SELECTION PROCESS BASED ON QUALIFICATIONS

Selection for professional services of A & E contractors by public agencies must be on the basis of demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the services required at a fair and reasonable price.

Projects requiring A & E professional services must be published in a statewide announcement through publications of the respective professional societies. This requirement is in addition to advertising in the California State Contracts Register.

The Request for Qualifications (RFQ) is the solicitation document that sets out the criteria for determining the best qualified professional for the project

Criteria should include such factors as professional excellence, demonstrated competence, specialized experience of the firm, education and experience of key personnel, staff capability, workload, ability to meet schedules, principals to be assigned, nature and quality of completed work, reliability and continuity of the firm, location, professional awards, and other relevant considerations. Such factors shall be weighed according to the nature and complexity of the project, the needs of the state, and the special requirements of the specific project.

11.06 • EVALUATION OF QUALIFICATIONS

(Rev 1/01 portion moved to new 11.08)

The statements of qualifications received by the date specified in the RFQ are evaluated together with performance data on file. Generally, the statements of qualifications are scored and ranked by a panel of individuals from the public agency, although professionals from outside the agency may also participate, depending on the nature of the project.

11.08 • NEGOTIATING A&E CONTRACTS

(New 1/01 moved & renumbered from 11.06)

After the discussions, the public agency shall negotiate a contract with the best qualified firm at compensation that the agency determines to be fair and reasonable. PCC § 6106 sets forth relevant time frames that must be adhered to in the negotiation and contracting process.

If the agency is unable to negotiate a satisfactory contract with the firm considered to be the most qualified, negotiations with that firm shall be terminated and negotiations undertaken with the second most qualified firm. If the agency is unable to negotiate a satisfactory contract with any of the selected firms, the agency shall select additional firms in order of their competence and qualification and continue negotiations until an agreement is reached.

11.10 • AWARD OF CONTRACT

(Rev 3/03)

A. Contract Award

Award of contract will be made to the A & E firm that:

1. Successfully negotiated a fee, and
2. Has complied with the DVBE requirements (if required).

(11.10 Award of Contract – continued)**B. Processing A&E Contracts**

On determining a need for services, the agency should prepare a contract that contains:

1. Names of the project manager, field representative, and project analyst
2. An accurate work description
3. Specifics of when, where, and for whom work is to be performed
4. Description of the required completion or inspection report
5. Time limitation
6. Monetary limitation
7. Expenses allowed
8. Payment clause, including progress payments
9. Extra work
10. Other special provisions

C. Review and Approval

The contract and copies are prepared and sent to the A & E firm. On return from the (A & E) firm, agency approvals are obtained. Then the contract is sent to DGS/OLS for review if required. The package consists of:

1. California State Contracts Register advertisement, and professional trade societies/trade publications ads
2. Contract
3. DVBE package (if applicable)
4. RFQ package and replies

These documents are used to substantiate compliance by the contracting agency with all procedural requirements.